Remarks/Arguments

In the Notice of Non-Compliant Amendment mailed December 28, 2008, the Examiner avers that Applicant's amendment filed August 13, 2008 was defective because (1) the original abstract was objected to; and (2) Applicant does not provide a response to the double patenting rejection in the office action mailed May 28, 2008. Applicant responds to these averments as follows.

The Examiner is thanked for having a telephone conversation with the undersigned attorney on January 22, 2009. The discussion was quite helpful in clarifying the matters raised by the Notice of Non-Compliant Amendment.

During the telephone conversation, it was pointed out to the Examiner that a revised abstract had been submitted in a preliminary amendment dated January 20, 2005. This amendment to the abstract was discussed on page 8 of the August 13, 2008 response. Thus, Applicant's August 13, 2008 amendment did not ignore the Examiner's objection. It responded to the objection by pointing out that a revised abstract containing less than 100 words and avoiding the implied phrases had been filed in an earlier amendment. The Examiner now acknowledges that he had missed the amended abstract and agrees that the amended abstract meets the requirements and that the objection is moot.

With respect to the obviousness-type double patenting rejection, Applicant's response did not ignore the rejection. It pointed out to the Examiner that the rejection was defective and not in compliance with the MPEP. MPEP section 804 II.B.1. points out the requirements for making an obviousness-type double patenting rejection including provisional rejections. It is clearly set forth in this section that the analysis employed

in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103 determination. See *In re Braat*, 937 F.2d 589,(Fed. Cir. 1991). This section goes on to point out that an appropriate rejection includes the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). This section clearly says the factual inquiries are employed in making obviousness-type double patenting rejections. The section also goes on to say that the conclusion of obviousness-type double patenting is made in light of the factual determinations and that any obviousness-type double patenting rejection should make clear the differences between the inventions defined by the conflicting claims - a claim in the parent compared to a claim in the application; and the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is an obvious variation of the invention defined in a claim in the patent. These latter points are the defects in the rejection made by the Examiner, which led to the August 13, 2008 response. Nowhere in the rejection does the Examiner point to a specific claim in the cited '475 application and discuss the differences between that claim and the claims in the instant case. Still further, the Examiner does not give any reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is an obvious variation of the invention defined in a claim in the patent. The Examiner merely provides a conclusory statement that both of the applications recite certain features. This does not meet the requirements set forth in section 804 of MPEP. Further, the Examiner ignores the fact that the disclosure of '475 application can not be used as prior

art. The two applications have the same U.S. filing date and the same effective filing date based upon the priority documents. In conclusion, Applicant's comments in the Amendment filed on August 13, 2008 were fully responsive to the rejection. Those comments pointed out that the rejection was defective and did not comply with the requirements of section MPEP 804. There was no John Deere analysis. For example, the Examiner has not explained why it would have been obvious to delete the locking pin from claim 1 in the '475 application and/or add the actuating means set forth in the main claim 18 in the instant application.

It is submitted that the amendment filed on August 13, 2008 is fully compliant with the requirements of 35 U.S.C. 111 and that the Notice of Non-Compliant Amendment was erroneously issued. The Notice of Non-Compliant Amendment should be withdrawn and the application should be further acted upon by the Examiner.

The instant application is believed to be in condition for allowance for the reasons set forth in the amendment filed on August 13, 2008.

Should the Examiner believe that an additional amendment is needed to place the case in condition for allowance, the Examiner is hereby invited to contact Applicant's attorney at the telephone number listed below.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,

Christophe Lorthioir et al.

By /Barry L. Kelmachter #29999/
Barry L. Kelmachter
Attorney for Applicants
Reg. No.: 29,999
Telephone: 203-777-6628
Telefax: 203-865-0297
docket@bachlap.com

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